

Senate Bill No. 1225

CHAPTER 114

An act to add Sections 9653.5 and 9653.6 to the Business and Professions Code, and to amend Sections 7018 and 8252 of the Health and Safety Code, relating to private cemeteries.

[Approved by Governor July 10, 2008. Filed with
Secretary of State July 10, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1225, Harman. Private cemeteries: limited liability companies.

Existing law, the Cemeteries Act, provides for the licensing and regulation of private cemeteries by the Cemetery and Funeral Bureau.

Existing law defines cemetery authority as any cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

This bill would include a limited liability company within the definition of a cemetery authority, and would make conforming changes.

Existing law, the Beverly-Killea Limited Liability Company Act, generally authorizes a business to organize as a limited liability company and to engage in any lawful business activity, except the banking business, the business of issuing policies of insurance and assuming insurance risks, or the trust company business. Existing law provides that this general authorization does not permit a limited liability company to render professional services, defined to mean any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.

This bill would prohibit licensed cemetery brokers, cemetery salespersons, cemetery managers, funeral directors, embalmers, crematorium licensees, or other persons licensed to provide services related to cemeteries and funerals from owning any ownership interest as a member in a limited liability company licensed as a cemetery authority. This bill would require the bureau, upon a determination that a licensed cemetery broker, cemetery salesperson, cemetery manager, funeral director, embalmer, crematorium licensee, or other person licensed to provide services related to cemeteries and funerals has an ownership interest as a member in the limited liability company, to suspend the limited liability company's certificate of authority and would require the bureau to reinstate the certificate of authority only upon finding that the person has been divested of his or her ownership interest in the limited liability company or has voluntarily surrendered his or her license.

This bill would require a limited liability company transacting intrastate business as a cemetery authority to provide security, as specified, for claims against it based upon acts, errors, or omissions of its licensed cemetery brokers, cemetery salespersons, cemetery managers, funeral directors, embalmers, crematorium licensees, and any other person licensed to provide services related to cemeteries and funerals by employing one or more of these licensed persons.

The people of the State of California do enact as follows:

SECTION 1. Section 9653.5 is added to the Business and Professions Code, to read:

9653.5. (a) Subject to subdivision (b), a limited liability company certificated as a cemetery authority pursuant to Section 7018 of the Health and Safety Code may provide services of licensed cemetery brokers, cemetery salespersons, cemetery managers, funeral directors, embalmers, crematorium licensees, and any other person licensed under this code to provide services relating to cemeteries and funerals by employing one or more of these licensed persons.

(b) At the time of certification, and at all times during which a limited liability company transacts intrastate business as a cemetery authority, the company shall be required to provide security for claims against it based upon acts, errors, or omissions of its licensed employees as described in subdivision (a) by complying with one, or a combination, of the following:

(1) (A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims. However, the total aggregate limit of liability under the policy or policies of insurance for a limited liability company that employs five or fewer licensed persons shall not be less than one million dollars (\$1,000,000), and for a limited liability company that employs more than five licensees, an additional one hundred thousand dollars (\$100,000) of insurance shall be obtained for each additional licensee except that the maximum amount of insurance is not required to exceed five million dollars (\$5,000,000) in any one designated period, less amounts paid in defending, settling, or discharging claims as set forth in this paragraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover:

(i) In the case of a claims-made policy, claims initially asserted in the designated period.

(ii) In the case of an occurrence policy, occurrences during the designated period.

(B) For purposes of this paragraph, “designated period” means a policy year or any other designated period in the policy that is not greater than 12 months.

(C) The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the

limited liability company to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this paragraph may be subject to a deductible or self-insured retention.

(D) Upon the dissolution and winding up of the limited liability company, the company shall, with respect to any insurance policy or policies then maintained pursuant to this paragraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum aggregate limit of liability required to comply with this paragraph for a minimum of three years if reasonably available from the insurer.

(2) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims. However, the maximum amount of security for a limited liability company that employs five or fewer licensed persons shall not be less than one million dollars (\$1,000,000), and for a limited liability company that employs more than five licensees rendering professional services on behalf of the company, an additional one hundred thousand dollars (\$100,000) of security shall be obtained for each additional licensee except that the maximum amount of security is not required to exceed five million dollars (\$5,000,000). The limited liability company remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the type described in this paragraph, provided that the amount of those accounts, funds, Treasury obligations, letters of credit, or bonds was at least the amount specified in the preceding sentence as of the first business day of that calendar year. Notwithstanding the pendency of other claims against the limited liability company, it shall be deemed to be in compliance with this paragraph as to a claim if within 30 days after the time that a claim is initially asserted through service of a summons, complaint, or comparable pleading in a judicial or administrative proceeding, the limited liability company has provided the required amount of security by designating and segregating funds in compliance with the requirements of this paragraph.

(3) Unless the limited liability company has satisfied paragraph (4), each member of a limited liability company certificated as a cemetery authority that provides professional services rendered by employees who are licensed professionals described in subdivision (a), by virtue of that person's status as a member, thereby automatically guarantees payment of the difference between the maximum amount of security required for the limited liability company by this subdivision and the security otherwise provided in accordance with paragraphs (1) and (2), provided that the aggregate amount paid by all members under these guarantees shall not exceed the difference.

Neither withdrawal by a member nor the dissolution and winding up of the limited liability company shall affect the rights or obligations of a member arising prior to withdrawal or dissolution and winding up, and the guarantee provided for in this paragraph shall apply only to conduct that occurred prior to the withdrawal or dissolution and winding up. Nothing contained in this subdivision shall affect or impair the rights or obligations of the members among themselves, or the limited liability company, including, but not limited to, rights of contribution, subrogation, or indemnification.

(4) Confirming, pursuant to the procedure in subdivision (c) of Section 16956 of the Corporations Code, that, as of the most recently completed fiscal year of the limited liability company, it had a net worth equal to or exceeding ten million dollars (\$10,000,000). The limited liability company shall transmit evidence of this paragraph to the Cemetery and Funeral Board in a form similar to the form submitted by a limited liability partnership providing alternative security provisions pursuant to subdivision (c) of Section 16956 of the Corporations Code.

(c) (1) A limited liability company may aggregate the security required pursuant to paragraphs (1) to (4), inclusive, of subdivision (b).

(2) For purposes of compliance with this section, the provisions of subdivision (d) of Section 16956 of the Corporations Code shall apply to a limited liability company certificated as a cemetery authority.

SEC. 2. Section 9653.6 is added to the Business and Professions Code, to read:

9653.6. (a) No person licensed under this code as a cemetery broker, cemetery salesperson, cemetery manager, funeral director, embalmer, crematorium licensee, or other person licensed to provide services related to cemeteries and funerals shall have any ownership interest as a member in a limited liability company certificated as a cemetery authority pursuant to Section 7018 of the Health and Safety Code.

(b) If a limited liability company admits, as a member with ownership interest, a licensed person described in subdivision (a), the limited liability company, by operation of law, shall be deemed in violation of Section 17375 of the Corporations Code, and the members shall be treated as partners with joint and several liability for claims made upon acts, errors, or omissions arising out of services provided by any licensed person described in subdivision (a).

(c) If the bureau determines that a licensed cemetery broker, cemetery salesperson, cemetery manager, funeral director, embalmer, crematorium licensee, or other person licensed to provide services related to cemeteries and funerals has an ownership interest as a member in the limited liability company, the bureau shall suspend the limited liability company's certificate of authority. The bureau shall reinstate the certificate of authority only upon finding that the licensed cemetery broker, cemetery salesperson, cemetery manager, funeral director, embalmer, crematorium licensee, or other person licensed to provide services related to cemeteries and funerals has been divested of his or her ownership interest in the limited liability company or has voluntarily surrendered his or her license.

SEC. 3. Section 7018 of the Health and Safety Code is amended to read:

7018. "Cemetery authority" includes cemetery association, corporation sole, limited liability company, or other person owning or controlling cemetery lands or property.

SEC. 4. Section 8252 of the Health and Safety Code is amended to read:

8252. It is unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within this state except by means of a corporation or limited liability company duly organized for these purposes.